



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/171322

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 04, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By:

[REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a FoodShare overpayment notice, dated December 18, 2015. It informed Petitioner that he had been overissued FoodShare in the amount of \$310.00 during the period of January through March 2011 because he trafficked his FoodShare benefits.
3. On January 9, 2011, the Petitioner's EBT card was used to redeem \$150.00 in benefits from [REDACTED]. It was used again on March 1, 2011 to redeem \$160.00 in benefits from [REDACTED].
4. From June 2010 to January 2013, [REDACTED] was not selling food, but was instead redeeming FoodShare benefits for a fraction of face value.

5. On November 16, 2015, the Division of Hearings and Appeals (DHA) conducted a hearing to determine whether the agency correctly concluded that the Petitioner intentionally violated the rules of the FoodShare program by trafficking \$310.00 in FoodShare benefits between January and March 2011. The Petitioner did not appear for that hearing and on December 17, 2015, the DHA issued a decision upholding the IPV determination. (DHA Case FOF-169241)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. §273.18(b), see also FoodShare Wisconsin Handbook (FSH), §7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. §273.18(b); see also FSH, §7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FSH, §7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The Petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In the case at hand, Milwaukee Enrollment Services alleges that an overpayment of benefits occurred, because the Petitioner committed an intentional program violation by trafficking his FoodShare benefits. An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card. *Also see FSH, §3.14.1, IPV Disqualification.*

Petitioner testified here that he had given his card to a friend who must have made the [REDACTED] transactions. At this point, that statement is self-serving. I am concluding that Milwaukee Enrollment Services has met its burden to prove that the Petitioner was selling his FoodShare benefits. That issue was decided in case FOF-169241. I do note that the transactions were in whole dollar amounts. Finally, during this time, [REDACTED] was not selling food; but was instead purchasing EBT benefits for a fraction of face value. As such, the Petitioner had to have been selling his benefits and the agency may recover the \$310.00: “Claims arising from trafficking related offenses will be the value of the trafficked benefits”, as established by the Petitioner’s admission, by adjudication, or by appropriate documentation. 7 C.F.R. 273.18(c)(2)

I do note for Petitioner’s benefit the following *FSH* provision as to repayment of an overissuance:

7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

FSH, §7.3.2.12.

CONCLUSIONS OF LAW

That Petitioner was overissued FoodShare as alleged and the agency correctly seeks to recover an overpayment of \$310.00.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of March, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 9, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability